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ABSTRACT

The Interim Committee on Teacher Evaluation and Dismissal was established by (Colorado) Senate Joint Resolution 97-14 to study the state's teacher evaluation and dismissal laws and explore alternatives. The committee was directed to study the relationship between education reform and employment protections for teachers; the effectiveness of adding "unsatisfactory performance" to grounds for teacher dismissal; the effectiveness of the teacher evaluation system; the balance between safeguards for teachers and flexibility to address performance deficiencies; and dismissal alternatives, including the feasibility of employing teachers through at-will contracts. The resolution also required appointment of a broadly representative task force. In brainstorming sessions, the group developed nearly 1,000 options, or legislative alternatives, and identified standards to measure them. Any option meeting all the standards was incorporated into Bill A, concerning certified personnel evaluations, or Bill B, concerning teacher dismissal. No consensus was reached on options related to contract law. Bill A focuses on evaluator preparation and the district-level evaluation system. Bill B makes significant changes in dismissal grounds and the dismissal process. This bill requires dismissals based on immorality, incompetency, neglect of duty, unsatisfactory performance, or insubordination. Included are an executive summary, a summary of recommendations, and legislative texts. (MLH)

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# Study of Teacher Evaluation And Dismissal

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Report to the

COLORADO

GENERAL ASSEMBLY

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Colorado Legislative Council
Research Publication No. 429
November 1997

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RECOMMENDATIONS FOR 1998

# STUDY OF TEACHER EVALUATION AND DISMISSAL

Report to the
Colorado General Assembly

Research Publication No. 429
November 1997

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November 14, 1997

To Members of the Sixty-first General Assembly:

Submitted herewith is the report of the 1997 Study of Teacher Evaluation and Dismissal. An Interim Committee Study Resolution (Senate Joint Resolution 97-14) established the committee to study teacher evaluation and dismissal laws and explore alternatives to the current process. The Executive Committee of the Legislative Council adopted the resolution at its June 17, 1997, meeting.

At its November 13, 1997, meeting, the Legislative Council reviewed this report and approved a motion to forward two bills with favorable recommendation to the Sixty-first General Assembly.

Respectfully submitted,

/s/ Representative Chuck Berry
Chairman
Legislative Council

CB/NO/cs

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# Study of Teacher Evaluation and Dismissal

## Members of the Committee

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Senator Ken Arnold
Senator Stan Matsunaka

Representative Debbie Allen
Vice Chairman
Representative Doug Dean
Representative Ron Tupa

## Members of the Task Force

- Judy Behnke
- Robert Conder
- Ellen Dellinger
- Jan Makris
- Bill Ott
- Fran Raudenbush
- Sharon Simpson
- Representative Tambor Williams
- Sue Burch
- Carolyn DeRaad
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# Executive Summary

## Committee Charge

The Interim Committee on Teacher Evaluation and Dismissal was established by Senate Joint Resolution 97-14 to study the state's teacher evaluation and dismissal laws and explore alternatives to the present process. The committee was directed to study, at a minimum, the following:

- the relationship between education reform and employment protections for teachers;
- the effectiveness of adding "unsatisfactory performance" to the grounds for teacher dismissal;
- the effectiveness of the teacher evaluation system;
- balancing sufficient safeguards for teachers and sufficient flexibility to address performance deficiencies; and
- dismissal alternatives, including the feasibility of employing teachers through at-will contracts.

The resolution also required a task force to be appointed to assist the interim committee. The task force was comprised of teachers, representatives from teachers unions, school district administrators, school board members, parents, and business representatives.

## Committee Activities

The task force held 10 days of meetings to pursue consensus on legislative alternatives to the teacher evaluation, dismissal, and contract laws. Members of the Interim Committee on Teacher Evaluation and Dismissal also participated in the debate. Under the direction of a federal mediator, the group conducted its business through a process known as interest-based bargaining. Interest-based bargaining is a negotiation tool used to help groups reach consensus on controversial issues. First, the group worked in anonymous computer brainstorming sessions to come up with nearly 1,000 options for the three areas of law. After developing the options, the task force identified standards by which the options were measured. Any option that met all of the standards was deemed to have unanimous approval from all group members and was incorporated into Bill A, concerning certificated personnel evaluations, and Bill B, concerning teacher dismissal. No consensus was reached on options related to contract law.

## Committee Recommendations

As a result of the interim committee and task force's hearings, the committee recommends two bills to the General Assembly.

***Bill A — Concerning the performance evaluation system for certificated education personnel.*** Bill A focuses on two areas: evaluator preparation and the evaluation system at the school district level. First, the bill establishes requirements for principal and administrator preparation programs to ensure that evaluators are adequately trained and that evaluator training is consistent statewide. The bill specifies the minimum areas that evaluator training must include and requires evaluators to demonstrate competencies. Second, the bill requires each district evaluation system to include one documented observation every 90 days and one written evaluation per year for probationary teachers, and one documented observation every semester and one written evaluation every three years for nonprobationary teachers. The performance standards for the evaluations must be developed by local boards of education, be related to classroom instruction, and include student performance. Peer observations and standardized client surveys may also be used in evaluations.

***Bill B — Concerning teacher dismissal.*** Bill B makes significant changes in two areas of current law: the grounds by which a teacher may be dismissed and the teacher dismissal process. Bill B deletes "physical or mental disability" from the grounds for dismissal, and adds "actions that the teacher knows or should know will endanger the health or safety of students." The bill requires that a dismissal on the grounds of immorality be based on a code of conduct to be adopted by the State Board of Education. The bill also requires dismissals based on incompetency, neglect of duty, unsatisfactory performance, or insubordination to be supported by documentation from the teacher's performance evaluations.

In an effort to increase cost-effectiveness, Bill B shortens the dismissal process by altering various time frames. Specifically, the bill:

- shortens the maximum time frame for completing the dismissal process at the district level from 120 to 94 days;
- shortens the maximum period for which a suspended teacher may receive pay from 120 days to 94 days;
- shortens the days that a school district must notify a teacher of a dismissal recommendation from seven to three days;
- shortens the time for the teacher to object to a dismissal and request a hearing from seven days to five working days;
- changes the time for selecting a hearing officer from five days to five working days;

- shortens the setting of the hearing date from five days following selection of the hearing officer to within three working days after selection,
- changes the start of the hearing from 30 days after the hearing officer is selected to within 30 days after the hearing is set, and
- reduces the length of the hearing from 10 to eight days without showing good cause for extension

In addition, Bill B makes changes to the teacher dismissal hearing process. Those changes include: (1) If the teacher and chief administrative officer cannot agree on a hearing officer within five working days, they must request the assignment of an administrative law judge from the Department of Personnel; (2) The hearing officer may no longer place any conditions on a recommendation for retention; (3) The grounds for appeal are limited to whether the school district board's action in dismissing the teacher was based on the stated grounds and whether the hearing officer's findings of fact showed significant evidence that the board did not act arbitrarily and capriciously in dismissing the teacher; and (4) The party who loses on appeal must pay the costs of the appeal, including attorney fees.

# Statutory Authority and Responsibilities

The Study of Teacher Evaluation and Dismissal was established by Senate Joint Resolution 97-14. The resolution directed the interim committee to review two issues: the administrative and economic effectiveness of the Teacher Employment, Compensation and Dismissal Act of 1990; and how to attain an effective, workable, and fair system of teacher employment, retention, and dismissal that ensures the highest quality of instructors for Colorado students. To assist the committee of six legislators, the resolution created a task force comprised of teachers, teacher union representatives, school district administrators, school board members, parents, and business representatives.

Specifically, the committee was directed to study and report its recommendations on policies or legislation relating to teacher evaluation and dismissal, including the following issues:

- the relationship between education reform and employment protections for teachers;
- the effectiveness of the addition of "unsatisfactory performance" as a ground for dismissal of a teacher;
- the effectiveness of the teacher evaluation system in regard to the implementation of standards-based education and teacher licensure;
- the achievement of a balance of sufficient safeguards and sufficient flexibility to address performance deficiencies; and
- alternatives to the present process by which a teacher may be dismissed and by which such dismissal may be appealed, including the feasibility of employing teachers through at-will contracts.

# Committee Activities

The recommendations contained in this report are the result of a joint effort by legislators, educators, local school board members, school district administrators, parents, and business persons. Senate Joint Resolution 97-14 required an interim legislative committee to study teacher evaluation and dismissal issues. To assist it, the interim committee was required to appoint a task force comprised of representatives from the affected parties in the teacher evaluation and dismissal processes. The task force, and members of the interim committee, held 10 meetings in their effort to reach consensus on concepts to be included within legislation attempting to rewrite teacher evaluation, dismissal, and contract law.

The task force included teachers, representatives from teacher unions, school district administrators, school board members, parents, and business representatives. The following people represented these groups on the task force:

Judy Behnke, Colorado Education Association
Sue Burch, Attorney
Robert Conder, Superintendent
Carolyn DeRaad, Parent
Ellen Dellinger, Teacher
Douglas Hartman, Colorado Fed. of Teachers
Jan Makris, BOCES Administrator
Dr. Mike Massarotti, Superintendent
Bill Ott, Teacher
Fran Raudenbush, Business
Terri Rayburn, School Board Member
Jay Rust, Colorado Education Association
Sharon Simpson, Teacher
Pam Suckla, School Board Member
Representative Tambor Williams, Parent

***Building consensus: the interest-based bargaining process.*** To help them come to agreement on a number of contentious issues, the task force and interim committee agreed to allow a federal mediator to facilitate their discussions. The group also agreed to conduct its work through an innovative consensus-building approach known as interest-based bargaining. Interest-based bargaining is a process which is intended to help groups reach consensus on controversial issues. Participants first develop a range of options through brainstorming sessions. Then, participants develop a range of standards by which all the options will be measured. Each option must pass the scrutiny of each standard in order for consensus to be reached.

The group followed the suggested outline for interest-based bargaining closely. The brainstorming occurred during two days of work at a computer lab in Jefferson County's Rooney Ranch Elementary School. Using a software program called Team Focus, members answered a set of questions anonymously in three separate sessions and generated nearly 1,000 options for an ideal system of teacher evaluation, dismissal, and contracts. Members then mutually agreed upon standards by which each set of options would be measured. When the measurements were completed, consensus had been reached on more than 50 options to be included within a bill rewriting the evaluation law, and more than 20 options were to be included in a revision of the dismissal law. There was no consensus reached on the options for a teacher contract law.


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After consensus was reached, the bills were drafted, and members of the task force were invited to review the bills and suggest changes. Finally, the interim committee approved the bills for presentation to the Legislative Council.

The development of the options, the standards of measurement for each topic, and the agreed-upon options are explained below.

## Consensus for a New Evaluation System

To reach consensus on the best possible evaluation system, members of the group set aside existing law and developed a range of options for new evaluation system requirements. Members developed options for a new law by stating how evaluations should ensure objectivity and honesty, and how they can result in teacher improvement and measure competency. After developing their options, members agreed their main goals were to re-create an evaluation system that ultimately results in improved teacher performance, retains good teachers, and gets rid of poorly performing ones. To accomplish these goals, members focused on the requirements for evaluator preparation and training, and the system of evaluation required at the school district level.

The group developed a range of options under each topic. For evaluator preparation and training, members focused on the following: what must be taught to future evaluators; what those who train evaluators must know; what knowledge and application evaluators must be able to demonstrate; and how the requirements should be implemented. Options for school district evaluation requirements fell under seven themes: purpose, standards for performance measurement, uses, methods, frequency, contents, and feedback.

In deciding what type of evaluation system to recommend to the General Assembly, the group agreed that each option must meet several standards.[1] The standards, which were defined by the group as well as by each member individually, pared down the options to only those that do the following:

- improve teacher performance;
- work for all districts, including large, small, rural, and metropolitan districts;
- are affordable and cost-effective;
- are constitutional;
- are efficient;
- are objective; and
- are saleable to all interested parties.

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1 The entire list of options for all three subjects are available at the Legislative Council Office, Room 029 of the State Capitol Building.

By consensus, the group agreed that more than 50 options met the standards and should be included in the interim committee's bill on teacher evaluation (Bill A). Most of the options were developed in the computer lab, others were created and adopted through collaboration. In either case, each is presented below. For organizational purposes in this report, the options are presented according to their subject or theme.

**Evaluator Preparation and Training Requirements**

The group had a lengthy discussion about how to ensure that evaluators are adequately prepared to conduct fair evaluations. Much was made about the quality of preparation evaluators receive in higher education and in other training programs. To help ensure high quality, a number of options were agreed to regarding preparation requirements and evaluator competency, including the following statement:

> Evaluation instructors and evaluators must pass demonstrable, standards-based competencies in the evaluation field. Such competencies should include, but not be limited to: communication training, conflict mediation, attention to individual differences, people skill development, counseling, student performance and student assessment, data collection and documentation, district standards, and state mandates.

Consensus also was reached on a number of options which are paraphrased below:

- In the training for the evaluators, include teaching and learning styles training;
- It is important for the ultimate evaluator, the one signing off on the evaluation, to have completed evaluator training from an accredited school or university. The accreditation of these schools and universities should be based upon standards- and research-based curriculum that is both up-to-date and reliable;
- Evaluators should undergo more intense training. Evaluations and criteria should be clear and easy to understand so that everyone understands what is to be expected in each district. That leaves an element of local control with clear expectations for all;
- Evaluators must receive ongoing training and be monitored to ensure that professional evaluations are completed according to district policy and state mandates;
- Administrators across the state should have adequate and standardized training in the evaluation process;
- Training and procedures should be consistent across the state; and
- Teachers should have required training in the areas of personnel development and resource management before they are promoted to administrator.

**Requirements for School District Evaluation Systems**

The group developed requirements for school district evaluations through debate, compromise, and collaboration with the central goal being how to improve teacher performance. To achieve this goal, the group agreed to options that can be categorized into seven themes: purposes of evaluations, uses of evaluation results, the development of standards to measure performance, methods of evaluation, evaluation frequency, evaluation report contents, and feedback to and from the evaluatee. Coinciding with the options, the group agreed to incorporate much of the current Certificated Personnel Performance Evaluation Act (Section 22-9-101, *et. seq.*), and subsequent guidelines developed by the State Board of Education. The options on which consensus was reached are presented below within their appropriate theme.

***Purposes of evaluations.*** With teacher improvement as their goal, group members agreed without much dissent that evaluations should:

- improve instruction;
- enhance implementation of curriculum programs; and
- measure levels of performance

***Uses of evaluation results.*** The group had more difficulty in determining what to do with evaluation results. Several teachers tried to focus the debate on fairness; administrators and school board members favored fairness as defined by local districts. The group agreed to maintain current law, and added that evaluations should serve as:

- a measurement of satisfactory performance;
- a measurement of professional growth and development; and
- documentation for an unsatisfactory performance/dismissal proceeding.

***Developing standards to measure performance.*** The debate on who should devise standards of performance, and what the standards should encompass, placed issues of local control and statewide guidance in conflict. While members generally agreed that local districts should develop their own standards, they were divided on specific performance measurement standards, including most notably whether student performance ought to be a measure of teacher performance. The agreed-to options regarding performance measurement standards include the following:

- Teacher evaluation should be based on measurable standards of performance, directly linked to teachers' responsibilities within the classroom, and consistently applied to all teachers throughout the school;
- Districts must determine standards for satisfactory performance, the criteria to determine whether the employee's performance meets such standards, and other criteria for evaluating each position evaluated. (Districts may choose to inform the evaluatee about the evaluation system);

- Evaluations must be made against clear standards so that performance is measured to an objective criteria and teachers are not rated on comparatives (one against another);
- Evaluations should be based on objective criteria established at the local level. The criteria should apply to all teachers. The criteria should be written and easily understood by the evaluator and the teacher;
- Evaluators and teachers should establish mutually agreeable instructional/ achievement teacher objectives for the year that focus on student growth;
- Evaluations should be based on known and measurable performance standards and criteria;
- Student learning and clearly defined expectations for all students at all ages (standards) must be a guide for teacher evaluations of performance, and
- Criteria of evaluation should be based on classroom instruction.

***Evaluation methods.*** The group discussed a number of ways evaluations can be conducted. Members agreed there should be both formal and informal evaluations for probationary and nonprobationary teachers. However, much debate ensued on whether informal observations and evaluations should be called "formative," and more formal observations and evaluations should be called "summative." There was concern that these terms were already defined in the education community, and that the existing definitions differed from the objectives of the task force. Finally, the interim committee withdrew the terms from Bill A, and replaced the language to require that teachers will receive both informally and formally conducted documented observations. The group agreed that these documented observations should include planned and unplanned visits. Also debated was whether written records must be kept, and if they could be used in dismissal proceedings. Both issues were addressed by various agreed-to options, which include:

- Districts must develop the methods of evaluation, which should include direct observations by the evaluator and a process of systematic data-gathering. (The facts may be shared with the evaluatee);
- All evaluations must observe the legal and constitutional rights of the evaluated personnel, and no evaluation information may be gathered by electronic devices without consent of the personnel;
- There should be accountability for the evaluators;
- Administrators must be accountable for conducting the evaluations according to the rules and keep accurate records of relevant documentation. This should be a required part of an administrator's performance evaluation;

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- Evaluators should provide clear and concise information regarding their performance evaluation of a teacher and, in the event of an unsatisfactory rating, help develop and monitor progress toward remediation of any identified deficiencies;
- Evaluation criteria should be clearly understood by both the evaluator and the teacher; and
- Evaluations should be based on direct observation and other documented data and should exclude hearsay.

Several of these options were culled from existing law. In addition, the group incorporated various guidelines established by the State Board in conjunction with the law, including requirements that districts: use evaluation methods which are supported by current research; require the administrator in charge of the operating unit to be responsible for summative (formal, written) evaluations; develop a biennial process to refine and improve the evaluation system; and provide evaluators with an ongoing staff development process.

***Frequency.*** Within the debate on evaluation methods, the group discussed how frequently teachers ought to receive documented observations. Members agreed that probationary teachers ought to have one informally documented observation every 90 days and one formal evaluation every year, while nonprobationary teachers should have one informal documented observation every year and one formal evaluation every three years. Members also agreed that evaluations must be conducted in a reasonable timeframe with sufficient time given for teacher remediation if performance rating is unsatisfactory.

***Evaluation contents.*** The content of evaluation reports was also controversial. The group debated whether and what type of student performance data and peer evaluations should be included. Teachers were concerned that evaluations would be measured too heavily on student performance. School board members, administrators, and parents argued that student performance must be one measure of teacher performance. In reaching consensus through collaboration, the group agreed that evaluations must include requirements within the current system plus items upon which recommendations and conclusions will be based, including:

- relevant and verifiable information linked to teacher instructional practices;
- standardized student performance data;
- standardized student performance data based on a school's mission, goals, and objectives;
- effective teaching-learning research;
- a fair cross-section of the teacher's performance;
- systematic data gathering approaches;

- a relationship to district standards;
- direct observation; and
- accurate records of when formal/informal observations occur.

The group also agreed that standardized peer surveys and client surveys could be incorporated at the discretion of the district.

***Feedback to and from the evaluatee.*** Several options suggested by group members addressed what should occur after evaluations are conducted. Most came from the current evaluation guidelines. First, the group agreed teachers should have a right to attach relevant documents to their evaluation if there is a difference of opinion or fact regarding the final evaluation. Second, the group agreed teachers should have the right to appeal the application of the procedures used to arrive at the conclusions through an established process, in accordance with local procedures. If an evaluation indicates unsatisfactory performance, the group agreed that a school district must give a teacher notice of his or her deficiencies, and that the district and teacher must jointly develop a remediation plan. The group also agreed that the district is required to provide unsatisfactorily performing personnel a reasonable time for remediation, a list of resources that can help correct discrepancies, and an opportunity to improve performance. Lastly, each local school board and Board of Cooperative Service (BOCS) also must have an advisory personnel performance evaluation council. Councils must consult with the local board or BOCS on the fairness, effectiveness, credibility, and professional quality of the evaluation system and its processes and procedures.

## Consensus on a New Dismissal System

Just as they did in developing a new evaluation system, group members set aside the existing teacher dismissal law and formulated concepts for a new law through the consensus-building process. Approximately 300 options for a new dismissal system were identified by describing reasons a teacher should be dismissed, the steps necessary in a dismissal process, how dismissal process costs should be allocated, and how costs can be reduced. Group members also agreed that for each option to be acceptable, it must pass a litmus test. The group determined that each acceptable option had to be:

- cost effective;
- timely;
- saleable;
- constitutional;
- workable for all districts; and
- practical

However, despite the group's desire to set aside the existing law and redesign a new dismissal system, consensus was reached only on altering several facets of the existing dismissal process. Those alterations were adopted more in terms of specific bill language than conceptually. The nine areas in which suggestions were made to change the dismissal process include: grounds for dismissal, dismissal timelines, suspension pay, hearing officer selection, hearing conduct, hearing officer recommendations, who pays for the process, the local school board's ultimate decision, and acceptable grounds for appeal.

***Grounds for dismissal.*** Rather than substantially change the grounds for dismissal, the group altered existing language. Most significantly, the group decided to delete "physical or mental disability" from the grounds to comply with the federal Americans with Disabilities Act, and add "actions that the teacher knows or should know will endanger the health or safety of students." The group also further defined the grounds for incompetency, unsatisfactory performance, and other good and just causes by relating them to specifically defined school district standards. In addition, immorality was further defined to be based on a code of conduct that must be adopted by the State Board of Education.

The group also agreed that any dismissal based on incompetency, neglect of duty, unsatisfactory performance, or insubordination must be based on and documented in evaluations conducted by trained evaluators under the new evaluation law.

***Dismissal timeline.*** Before identifying options for a new dismissal process, the group agreed that two of its goals were to shorten the timeframe and achieve better cost-effectiveness. To meet these goals, the group formed an ad hoc committee comprised of attorneys from various parties. The result was a timeframe that narrows the process from a maximum of 120 days to 94 days, with which the group agreed. Included within the changes are the following:

- Allow a local board of education three days, instead of seven, to give dismissal notice to a teacher;
- Allow a teacher who has been given a dismissal notice five working days, instead of seven, to file an objection and request a hearing;
- Allow the teacher and chief administrative officer of the school district five working days to choose a hearing officer;
- Allow a hearing officer three working days, instead of five days, to set the date of the hearing, which must then commence within the next 30 days;
- Require hearings to be completed within eight working days, instead of ten days, unless extended by the hearing officer for good cause, with each side allowed only four days to present its case; and
- No longer require hearing officers to state their findings in an open court session.

Coinciding with the reduction in the timeline, the group agreed that suspension pay for teachers should be reduced from 120 days to 94 days.

***Hearing officer selection.*** During the cost-savings discussion, group members shared their frustrations with the hourly fees charged by hearing officers. This frustration was also discussed by the ad hoc committee, which suggested that school districts and teachers have the option of selecting a hearing officer from the administrative law judge (ALJ) pool within the state Department of Personnel. It was estimated that approximately $150-$200 an hour could be saved by using this option. Members agreed to the committee's suggestion, and also agreed that if a hearing officer could not be chosen by the two parties within five days of the teacher's request for a hearing, then the case will automatically go to the state ALJ system.

***Hearing conduct.*** Aside from the timeline, the group discussed a variety of options intended to focus on the hearing process. The group agreed that the chief administrative officer and teacher should have a maximum of 17 days after the selection of a hearing officer to submit a copy of all exhibits and a complete witness list. Within that timeline, each party has 10 days to submit their original materials, and seven days to supplement them. The group also agreed to allow hearsay testimony only as it is permitted within the Colorado Rules of Evidence.

***Hearing officer recommendation.*** Group members expressed concern that hearing officers were going beyond their statutory authority in some dismissal cases by recommending remediation as a condition of retention. The group agreed that a hearing officer may make ONLY one of two recommendations — for dismissal or retention — with no conditions added.

The group also agreed that the hearing officer must not be able to recommend remediation for issues unsuccessfully remediated over the previous 5 years. However, after much discussion regarding whether this would include previous employment at another district, the issue was not included in the bill. By limiting the authority of the hearing officer, this issue became moot.

***Paying for the process.*** Intending to limit frivolous appeals, group members agreed early in the process to require the loser at the state Court of Appeals level to pay attorney fees, the cost of audiotaping the hearing, and the cost of transcribing the hearing record. The group also agreed that hearing officer costs would continue to be paid by the school district.

***School board decisions.*** The group debated at length how to balance due process for a teacher who has been dismissed while allowing for local district control in the hiring and firing decisions. The group agreed that the ultimate decision rests with the board, but that the board's decision must be based on the hearing officer's findings of fact.

***Issues on appeal.*** In another attempt to shorten the timeframe and reduce costs in the process, the group agreed that the issues for appeal ought to be limited to the following:

- Whether the board's action in dismissing the teacher was based on the specific grounds for dismissal stated by the chief administrative officer; and
- Whether the findings of fact specified by the hearing officer showed sufficient evidence related to the grounds for dismissal such that the board did not act arbitrarily or capriciously

## Consensus Not Reached on Contract Law

The group's final charge was to discuss the feasibility of employing teachers through at-will contracts. Although the issue was discussed, no recommendations were made. Like it did in recommending changes to the other two areas of law, the group conducted its work through the consensus-building process. First, it developed options for creating a teacher contract system by suggesting acceptable lengths of terms for the probationary and nonprobationary contracts, how a contract should address teacher performance, what should be addressed in a contract, and to what extent contracts should be specified in statute. Despite devising a range of options, the group could not agree on changing the number of years for a probationary teacher, or developing a replacement for nonprobationary status. After debating the issue for several hours, it appeared that consensus would not be reached, and the issue of teacher contracts was taken off the table.

# Summary of Recommendations

## Recommending a New Evaluation System and Revisions to the Dismissal Law

The Interim Committee on Teacher Evaluation and Dismissal and its task force recommends Bill A, which creates a new system for evaluating the performance of certificated and licensed education personnel, and Bill B, which revises several sections of the current dismissal law. Each member of the committee and task force contributed to extensive debate regarding the scope and feasibility of nearly 600 options suggested by members in these two areas. Consensus was reached on a number of concepts for each area. The concepts agreed upon were then translated into bill language. Following is a summary of the recommendations in each bill.

## Bill A — Concerning the Performance Evaluation System for Certificated Education Personnel

Bill A addresses two primary areas: evaluator training and school district evaluation systems. The first area places requirements on what evaluators must know, what competencies evaluators must be able to demonstrate, what evaluator preparation programs must teach, and what evaluator educators must know. The second area addresses requirements for school district evaluation systems.

***Fiscal impact.*** According to Bill A's fiscal note, the bill will require expenditures of $5,300 in cash funds to develop and amend rules for evaluator preparation and $4,500 from the General Fund to revise State Board evaluation guidelines. Regarding the local impact, the bill will increase the workload of some administrators at the school level.

### Evaluator Training

***Evaluator preparation program requirements.*** Bill A places numerous requirements on the structure of evaluator preparation programs and the competencies future evaluators must be able to demonstrate. For instance, each program must provide training in teacher and learning styles, counseling, student performance, and student assessment. The State Board of Education is required to ensure that programs follow the law.

***How and when the law will apply.*** The bill applies to principals or administrators who become first-time evaluators after July 1, 2000. Current evaluators must begin to update their skills as required by the bill for licensure renewals that occur after July 1, 2000.

**Requirements for School District Evaluations**

***Evaluation frequency.*** The bill requires nonprobationary teachers to receive a documented observation once every 90 days, and one formally written evaluation every year. Nonprobationary teachers must receive one documented observation a year and one formally written evaluation every three years.

***Evaluation system requirements.*** The bill states the purposes and uses for evaluations and requires school districts to develop criteria for measuring performance. The bill also provides a specific list of what should be contained in an evaluation report, including content, types of data, and data sources related to instructional practices and student performance. If an evaluatee disagrees with an evaluation's findings, he or she may document any disagreement. Also, evaluators are required to keep accurate records for each evaluation conducted.

## Bill B — Concerning Teacher Dismissal

Bill B revises several topics within the current dismissal law, including the grounds for dismissal, the dismissal process timeline, hearing officer requirements, pre-hearing and hearing timelines, hearing officer and local board decisions, and appeals.

***Potential fiscal impact.*** According to the bill's fiscal note, Bill B may have an impact on state revenues and expenditures if administrative law judges from the Department of Personnel are used as hearing officers in dismissal actions. In addition, school district resources may be required for legal representation if there are dismissal cases. However, school districts might save money because the bill reduces the number of days in the dismissal process and, thus, the number of days a teacher may receive suspension pay.

***Grounds for dismissal are altered and redefined.*** Bill B deletes "physical and mental disability" from the grounds for dismissal to comply with the federal American with Disabilities Act, but adds "actions that the teacher knows or should know will endanger the health or safety of students." The bill requires that a dismissal based on the grounds of immorality be based on a code of conduct developed jointly by districts, teachers, and parents and adopted by the State Board of Education. In addition, dismissals based on incompetency, unsatisfactory performance, and other good and just causes must be based on standards developed by the school districts.

***Shortening the dismissal and hearing timelines and procedures.*** The minimum timeframe of the dismissal process, from a school board's notification of dismissal to a teacher to the hearing officer's recommendation of retention or dismissal is reduced from 120 to 94 days. Shortened are the number of days that school boards have to give teachers notice of dismissal, that teachers have to give notice of objection and request a hearing, for selecting a hearing officer, to set the hearing date, for conducting the hearing itself, and for both sides in the hearing to supplement case materials. With that shortened timeframe, the number of days a teacher may receive suspension pay is reduced from 120 to 94.

***Changing hearing officer requirements.*** The bill requires that if a dismissed teacher and a school district chief administrative officer cannot agree on a hearing officer within five days of receipt of the teacher's objection notice, they must request assignment of an administrative law judge by the Department of Personnel.

***Clarifying the hearing officer's and local board's conclusions.*** The bill clarifies that the hearing officer may not add any conditions to the recommendation provided to the local school board. For instance, a hearing officer is prohibited from recommending that a school district retain a teacher but provide further remediation. In addition, the local school board's final decision must be supported by the hearing officer's findings of fact.

***Defining the issues for appeal.*** The bill limits to two issues why a teacher may appeal the local board's action to dismiss. First, a teacher may question whether the board's action was based on specific grounds for dismissal as stated by the Chief Administrative Officer. Second, the teacher may question whether the findings of fact specified by the hearing officer were sufficient for the board's dismissal action or whether the board acted arbitrarily or capriciously.

***Court of appeals decisions.*** If the court finds an irregularity or error during the hearing, it has discretion on whether to remand the case for further hearing or not. Current law requires that the court remand the case if it finds an irregularity.

***Loser on appeal pays.*** The cost of the appeal incurred by both sides, including the cost of the hearing tape and transcription, must be paid in total by the losing party. The court is required to enter a judgment regarding such costs.

# MATERIALS AVAILABLE

The following materials relevant to the Interim Committee on Teacher Evaluation and Dismissal are available from the office of the Legislative Council.

## Meeting Summaries

Of the 10 meetings, only four were official joint meetings of the interim committee and task force. The rest were task force meetings that interim committee members attended. Legislative Council meeting summaries are available for the following four interim committee meetings: July 16, July 28, October 1, and October 17.

## Staff Memoranda

Staff wrote a variety of memoranda to prepare the interim committee and its task force. These include:

*Organizational Matters*, July 1, 1997. Colorado Legislative Council Staff.

*Overview of Evaluation and Dismissal Laws and Processes*, July 2, 1997. Colorado Legislative Council Staff.

*History and Judicial Interpretation of the Teacher Employment, Compensation and Dismissal Act of 1990*, July 3, 1997. Office of Legislative Legal Services.

*Past Approaches to Amending Laws Relating to Teacher Employment*, July 3, 1997. Colorado Legislative Council Staff.

## Catalog of Options

Members of the interim committee and task force developed nearly 1,000 options to be measured by standards and included within teacher evaluation, dismissal, and contract laws. Each list of options is available at the Legislative Council Office, Room 029 State Capitol Building.

## Other Reports Available

*Certificated Personnel Performance Evaluation Guidelines*, March 1993. Colorado State Board of Education.

*Certificated Personnel Performance Evaluation System Survey Report*, January 1994. Colorado Department of Education.

*Teacher Dismissal Non-Renewal Cases Reported to CEA Legal Services*, June 1, 1994 – July 1, 1997. Colorado Education Association.

*Colorado Association of School Boards Teacher Employment Task Force Report*, July 10, 1997. Colorado Association of School Boards.

*Gold Files from Arizona Educational Information System (Dismissal of School Employees, Teacher Tenure, and Teacher Evaluation)*. Arizona Educational Information System, Arizona State University.

**BILL A**

By Senator Arnold

A BILL FOR AN ACT

CONCERNING THE PERFORMANCE EVALUATION SYSTEM FOR CERTIFICATED EDUCATION PERSONNEL.

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**Bill Summary**

"Teacher Evaluations"

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Interim Committee on Teacher Evaluation and Dismissal

**Sections 1-4:** Establishes requirements for principal and administrator preparation and other evaluator training programs to ensure that training in evaluation skills is consistent statewide. Requires institutions of higher education that provide principal and administrator preparation programs and school districts and boards of cooperative services that provide evaluator training to comply with the program requirements. Requires each principal or administrator who is assigned evaluator duties on or after July 1, 2000, to have evaluator training that meets the requirements. Specifies the minimum areas that evaluator training shall include. To successfully complete evaluator training, requires a principal or administrator to demonstrate competencies in the minimum specified areas. Specifies that any principal or administrator who is responsible for evaluating certificated personnel shall include evaluator training that meets the statutory requirements in the professional development activities he or she completes for licensure renewal.

Makes conforming amendments.

**Section 5:** Requires each school district's performance evaluation system to include one documented observation every 90 days and one evaluation that results in a written report per year for probationary teachers and one documented observation each semester and one evaluation that results in a written report every 3 years for nonprobationary teachers.

Specifies that the evaluation shall provide a benchmark for measuring a teacher's improvement and a basis for a growth plan.

Specifies that one of the standards set by a school district for measuring teacher performance shall be directly related to classroom instruction, including but not limited to student performance. Requires school districts to make teacher performance standards and criteria available in writing to all

certificated personnel. Requires the evaluator to communicate standards and criteria and to discuss them with the person being evaluated.

Expands the contents of the evaluation report by adding relevant and verifiable information, student performance data, explanations and support for the conclusions reached and recommendations made, and a record of the observations made in conducting the evaluation. Allows the evaluation report to include peer observations and standardized client surveys.

If the person being evaluated disagrees with the evaluation, allows the person to attach any written explanation or other documentation that the person deems necessary.

Requires evaluators to keep records regarding each evaluation. Instructs each local board to specify in its performance standards for evaluators the documentation to be maintained on each evaluation. Specifies that failure to appropriately maintain documentation shall be reflected in the evaluator's performance evaluation.

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*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 22-9-108, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

**22-9-108. Evaluator training - universities and colleges - duties.** (1) (a) THE GENERAL ASSEMBLY FINDS THAT CREDIBLE, FAIR, AND PROFESSIONAL EVALUATIONS OF CERTIFICATED PERSONNEL DEPEND UPON HIGH QUALITY, EFFECTIVE TRAINING FOR PRINCIPALS AND ADMINISTRATORS THAT IS CONSISTENT ACROSS THE STATE. THEREFORE, THE STATE BOARD, IN EVALUATING AND APPROVING EDUCATOR PREPARATION PROGRAMS PURSUANT TO SECTION 22-2-109, AND IN APPROVING EVALUATOR TRAINING PROGRAMS PROVIDED BY A SCHOOL DISTRICT OR A BOARD OF COOPERATIVE SERVICES, SHALL ENSURE THAT SAID PROGRAMS MEET THE REQUIREMENTS SPECIFIED IN THIS SECTION.

(b) EVERY UNIVERSITY AND COLLEGE WITHIN THE STATE THAT HAS A PRINCIPAL OR ADMINISTRATOR PREPARATION PROGRAM SHALL ENSURE THAT

THE PROGRAM INCLUDES TRAINING IN THE EVALUATION OF CERTIFICATED PERSONNEL THAT MEETS THE REQUIREMENTS SPECIFIED IN THIS SECTION. IN ADDITION, THE UNIVERSITY OR COLLEGE SHALL COOPERATE WITH THE STATE BOARD IN CONNECTION WITH THE STATE BOARD'S DUTIES UNDER SECTIONS 22-9-104 AND 22-2-109.

(c) EVERY SCHOOL DISTRICT AND BOARD OF COOPERATIVE SERVICES THAT PROVIDES TRAINING IN THE EVALUATION OF CERTIFICATED PERSONNEL SHALL ENSURE THAT SUCH TRAINING MEETS THE REQUIREMENTS SPECIFIED IN THIS SECTION.

(d) EACH SCHOOL DISTRICT SHALL ENSURE THAT EACH PRINCIPAL OR ADMINISTRATOR FIRST ASSIGNED TO BE AN EVALUATOR IN THE SCHOOL DISTRICT ON OR AFTER JULY 1, 2000, HAS SUCCESSFULLY COMPLETED TRAINING IN EVALUATING CERTIFICATED PERSONNEL THAT MEETS THE REQUIREMENTS SPECIFIED IN THIS SECTION.



(2) EACH UNIVERSITY OR COLLEGE THAT OFFERS A PRINCIPAL OR ADMINISTRATOR PREPARATION PROGRAM OR SCHOOL DISTRICT OR BOARD OF COOPERATIVE SERVICES THAT PROVIDES EVALUATOR TRAINING SHALL STRUCTURE THE EVALUATOR TRAINING PROGRAM ON A STANDARDS-BASED SKILL OUTCOME MODEL THAT TAKES INTO ACCOUNT RESEARCH CONCERNING EVALUATION OF CERTIFICATED PERSONNEL. AT A MINIMUM, EACH EVALUATOR TRAINING PROGRAM SHALL INCLUDE STANDARDS-BASED PERFORMANCE ASSESSMENTS OF EACH PARTICIPANT, DEMONSTRATED COMPETENCY, AND CERTIFICATION BY THE UNIVERSITY, COLLEGE, SCHOOL DISTRICT, OR BOARD OF COOPERATIVE SERVICES OF THE SKILLS MASTERED BY EACH PARTICIPANT. THE UNIVERSITY, COLLEGE, SCHOOL DISTRICT, OR BOARD OF COOPERATIVE SERVICES SHALL WORK COLLABORATIVELY WITH PRINCIPALS AND

ADMINISTRATORS WHO ARE RESPONSIBLE FOR EVALUATING CERTIFICATED PERSONNEL TO DEVELOP RESEARCH-BASED STANDARDS FOR ASSESSING AND CERTIFYING EVALUATOR SKILLS. THE UNIVERSITY, COLLEGE, SCHOOL DISTRICT, OR BOARD OF COOPERATIVE SERVICES SHALL REGULARLY REVIEW BOTH THE MODEL FOR THE EVALUATOR TRAINING PROGRAM AND THE PROGRAM PERFORMANCE STANDARDS TO ENSURE THAT THEY CONTINUE TO REFLECT RESEARCH CONCERNING EVALUATION OF CERTIFICATED PERSONNEL.

(3) AT A MINIMUM, EACH EVALUATOR TRAINING PROGRAM SHALL INCLUDE TRAINING IN THE FOLLOWING AREAS:

(a) TEACHING AND LEARNING STYLES;

(b) COMMUNICATION;

(c) CONFLICT MEDIATION;

(d) ATTENTION TO INDIVIDUAL DIFFERENCES;

(e) PEOPLE SKILLS DEVELOPMENT;

(f) COUNSELING;

(g) STUDENT PERFORMANCE AND STUDENT ASSESSMENT;

(h) DATA COLLECTION AND DOCUMENTATION; AND

(i) SCHOOL DISTRICT STANDARDS AND STATE MANDATES.

**SECTION 2.** 22-2-109 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**22-2-109. State board of education - additional duties.** (1) The state board of education shall:

(p) ADOPT RULES TO ENSURE THAT PRINCIPAL AND ADMINISTRATOR PROGRAMS OF PREPARATION MEET THE REQUIREMENTS CONCERNING INSTRUCTION IN EVALUATING CERTIFICATED PERSONNEL SPECIFIED IN SECTION 22-9-108.

**SECTION 3.** 22-9-104 (2) (b), Colorado Revised Statutes, is amended to read:

**22-9-104. State board - powers and duties.** (2) The state board shall:

(b) Work and cooperate with the state's universities and colleges ~~which~~ THAT have teacher, principal, or administrator education programs to assure that ~~persons~~ PRINCIPALS AND ADMINISTRATORS having evaluation responsibilities will receive adequate education and training THAT MEETS THE REQUIREMENTS SPECIFIED IN SECTION 22-9-108 ~~which~~ AND will enable them to make thorough, credible, fair, and professional quality evaluations of all certificated personnel whom those ~~persons~~ PRINCIPALS OR ADMINISTRATORS may be responsible for evaluating;

**SECTION 4.** 22-9-106 (4), Colorado Revised Statutes, is amended to read:

**22-9-106. Local boards of education - duties.** (4) (a) No person shall be responsible for the evaluation of certificated personnel unless such person has an administrative certificate issued pursuant to article 60 of this title OR A PRINCIPAL OR ADMINISTRATOR LICENSE ISSUED PURSUANT TO ARTICLE 60.5 OF THIS TITLE and has received education and training in evaluation skills approved by the department of education ~~which~~ THAT will enable him OR HER to make fair, professional, and credible evaluations of the personnel whom he OR SHE is responsible for evaluating. No person shall be issued an administrative certificate OR A PRINCIPAL OR ADMINISTRATOR LICENSE or have an administrative certificate OR PRINCIPAL OR ADMINISTRATOR LICENSE renewed unless the state board determines that such person has received education and training approved by the department of education.

(b) FOR ANY PRINCIPAL OR ADMINISTRATOR WHO FIRST BECOMES RESPONSIBLE FOR EVALUATING CERTIFICATED PERSONNEL ON OR AFTER JULY 1, 2000, THE EDUCATION AND TRAINING IN EVALUATION SKILLS THAT SUCH PRINCIPAL OR ADMINISTRATOR RECEIVES SHALL MEET THE REQUIREMENTS SPECIFIED IN SECTION 22-9-108. BEGINNING JULY 1, 2000, ANY PRINCIPAL OR ADMINISTRATOR WHO IS RESPONSIBLE FOR EVALUATING CERTIFICATED PERSONNEL SHALL INCLUDE EVALUATOR TRAINING THAT COMPLIES WITH THE REQUIREMENTS SPECIFIED IN SECTION 22-9-108 IN THE PROFESSIONAL DEVELOPMENT ACTIVITIES HE OR SHE COMPLETES FOR RENEWAL OF THE PROFESSIONAL LICENSE.

**SECTION 5.** 22-9-106 (1), (2.5), (3), and (4.5), Colorado Revised Statutes, are amended, and the said 22-9-106 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**22-9-106. Local boards of education - duties.** (1) All school districts and boards of cooperative services ~~which~~ THAT employ certificated personnel, as defined in section 22-9-103 (1.5), shall adopt a written system to evaluate the employment performance of school district and board of cooperative services certificated personnel, including all teachers, principals, and administrators, with the exception of certificated personnel employed by a board of cooperative services for a period of six weeks or less. In developing the certificated personnel performance evaluation system and any amendments thereto, the local board and board of cooperative services shall consult with administrators, principals, and teachers employed within the district or participating districts in a board of cooperative services, parents, and the school district certificated personnel performance evaluation council or the board of cooperative services personnel performance evaluation council created pursuant to section 22-9-107.

The performance evaluation system shall contain, but shall not be limited to, the following information:

(a) The title or position of the evaluator for each certificated personnel position to be evaluated;

(b) The certificated personnel positions to be evaluated, which shall include all certificated personnel, all part-time teachers as defined in section 22-63-103 (6), and all administrators and principals;

(c) The frequency and duration of the evaluations, which shall be on a regular basis and of such frequency and duration as to ~~insure~~ ENSURE the collection of a sufficient amount of data from which reliable conclusions and findings may be drawn. AT A MINIMUM, THE PERFORMANCE EVALUATION SYSTEM SHALL ENSURE THAT PROBATIONARY TEACHERS RECEIVE AT LEAST ONE DOCUMENTED OBSERVATION EVERY NINETY DAYS WHILE SCHOOL IS IN SESSION AND ONE EVALUATION THAT RESULTS IN A WRITTEN EVALUATION REPORT PURSUANT TO SUBSECTION (3) OF THIS SECTION EVERY YEAR AND THAT NONPROBATIONARY TEACHERS RECEIVE AT LEAST ONE DOCUMENTED OBSERVATION EVERY SEMESTER AND AT LEAST ONE EVALUATION THAT RESULTS IN A WRITTEN EVALUATION REPORT PURSUANT TO SUBSECTION (3) OF THIS SECTION EVERY THREE YEARS.

(d) The purposes of the evaluation, which shall ~~serve as~~ INCLUDE BUT NEED NOT BE LIMITED TO:

(I) PROVIDING a basis for the improvement of instruction;

(II) ~~Enhance~~ ENHANCING the implementation of programs of curriculum;

(III) ~~serve as~~ PROVIDING the measurement of satisfactory performance for individual certificated personnel and ~~serve~~ SERVING as documentation for an unsatisfactory performance dismissal proceeding under article 63 of this title;

(IV) ~~serve~~ SERVING as a measurement of the professional growth and development of certificated personnel AND PROVIDING A BENCHMARK UPON WHICH THE PERSON BEING EVALUATED AND THE EVALUATOR SHALL ESTABLISH A PROFESSIONAL GROWTH PLAN TO MEASURE THE PERSON'S FUTURE GROWTH AND DEVELOPMENT; and

(V) ~~measure~~ MEASURING the level of performance of all certificated personnel within the school district or employed by a board of cooperative services.

(e) The standards SET BY THE LOCAL BOARD for satisfactory performance for certificated personnel and the criteria to be used to determine whether the performance of each certificated ~~personnel~~ PERSON meets such standards and other criteria for evaluation for each certificated personnel position evaluated. ONE OF THE STANDARDS FOR MEASURING TEACHER PERFORMANCE SHALL BE DIRECTLY RELATED TO CLASSROOM INSTRUCTION AND SHALL INCLUDE BUT SHALL NOT BE LIMITED TO STUDENT PERFORMANCE. THE PERFORMANCE EVALUATION SYSTEM SHALL ALSO ENSURE THAT THE STANDARDS AND CRITERIA ARE AVAILABLE IN WRITING TO ALL CERTIFICATED PERSONNEL AND ARE COMMUNICATED AND DISCUSSED BY THE PERSON BEING EVALUATED AND THE EVALUATOR PRIOR TO AND DURING THE COURSE OF THE EVALUATION.

(f) The methods of evaluation, which shall include, but shall not be limited to, direct observations by the evaluator and a process of systematic data-gathering.

(2.5) The council shall actively participate with the local board or board of cooperative services in developing written standards for evaluation ~~which~~ THAT clearly specify satisfactory performance and the criteria to be used to

determine whether the performance of each certificated ~~personnel~~ PERSON meets such standards pursuant to paragraph (e) of subsection (1) of this section.

(3) (a) ~~An~~ A WRITTEN evaluation report shall be issued upon the completion of an evaluation made pursuant to this section. ~~and shall:~~ THE EVALUATION REPORT SHALL REPRESENT A FULL AND FAIR CONSIDERATION OF THE FULL SCOPE OF THE DUTIES AND RESPONSIBILITIES OF THE PERSON BEING EVALUATED. EACH EVALUATION REPORT SHALL CONTAIN, BUT NEED NOT BE LIMITED TO, THE FOLLOWING ITEMS AS A BASIS FOR THE CONCLUSIONS AND RECOMMENDATIONS MADE IN THE EVALUATION:

~~(a)~~ (I) ~~Be in writing~~ RELEVANT AND VERIFIABLE INFORMATION LINKED TO THE INSTRUCTIONAL PRACTICES OF THE PERSON BEING EVALUATED;

(II) STUDENT PERFORMANCE DATA; EXCEPT THAT THE LOCAL BOARD MAY DETERMINE THAT SUCH DATA NEED NOT BE INCLUDED IN EVALUATING CERTIFICATED NONTEACHING PERSONNEL;

(III) EXPLANATIONS OF THE CONCLUSIONS REACHED AND RECOMMENDATIONS MADE IN THE EVALUATION BASED ON EFFECTIVE TEACHING AND LEARNING RESEARCH AND THE SCHOOL DISTRICT PERFORMANCE STANDARDS ESTABLISHED FOR THE POSITION BEING EVALUATED;

~~(b)~~ (IV) ~~Contain~~ A written improvement plan ~~which~~ THAT shall be specific as to what improvements, if any, are needed in the performance of the ~~certificated personnel~~ PERSON BEING EVALUATED and shall clearly set forth recommendations for improvements, including recommendations for additional education and training during the ~~teacher's~~ PERSON'S recertification process;

~~(c)~~ (V) ~~Be~~ A specific ~~as to~~ EXPLANATION OF the strengths and weaknesses in the performance of the ~~individual~~ PERSON being evaluated.

~~(d)~~ (VI) ~~Specifically identify when a direct observation was made~~ A RECORD OF THE OBSERVATIONS MADE BY THE EVALUATOR, INCLUDING WHEN THE OBSERVATIONS WERE MADE, AND ANY CONCLUSIONS OR RECOMMENDATIONS DRAWN FROM THE OBSERVATIONS; AND

~~(e)~~ (VII) ~~Identify~~ A LISTING OF THE data sources USED IN CONDUCTING THE EVALUATION AND A DESCRIPTION OF THE PARTICULAR DATA OBTAINED FROM EACH SOURCE, EXCEPT THAT THE EVALUATOR MAY EXCLUDE THE IDENTITY OF ANY PARENT WHO PROVIDES DATA IF THE PARENT REQUESTS ANONYMITY.

(b) IN ADDITION TO THE ITEMS SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (3), THE EVALUATION MAY INCLUDE ANY PEER INPUT GIVEN OR RECEIVED AT THE REQUEST OF THE EVALUATOR, THE SCHOOL DISTRICT, OR THE PERSON BEING EVALUATED AND RESULTS FROM STANDARDIZED CLIENT SURVEYS.

~~(f)~~ (c) EACH EVALUATION REPORT SHALL be discussed and be signed by the evaluator and the person being evaluated, each to receive a copy of the report. The signature on the report of any person shall not be construed to indicate agreement with the information contained in the report. IF THE PERSON BEING EVALUATED DISAGREES WITH ANY OF THE CONCLUSIONS OR RECOMMENDATIONS MADE IN THE EVALUATION REPORT, THE PERSON MAY ATTACH ANY WRITTEN EXPLANATION OR OTHER RELEVANT DOCUMENTATION THAT THE PERSON DEEMS NECESSARY.

~~(g)~~ (d) EACH EVALUATION REPORT SHALL be reviewed by a supervisor of the evaluator, whose signature shall also appear on said report.

(3.3) EACH PRINCIPAL OR ADMINISTRATOR WHO IS RESPONSIBLE FOR EVALUATING CERTIFICATED PERSONNEL SHALL KEEP ACCURATE RECORDS AND DOCUMENTATION FOR EACH EVALUATION CONDUCTED. EACH LOCAL BOARD,

IN ESTABLISHING PERFORMANCE STANDARDS FOR PRINCIPALS AND ADMINISTRATORS WHO ARE RESPONSIBLE FOR EVALUATING CERTIFICATED PERSONNEL, SHALL SPECIFY THE DOCUMENTATION TO BE MAINTAINED IN SUPPORT OF EACH EVALUATION AND THE LENGTH OF TIME SUCH DOCUMENTATION IS TO BE MAINTAINED. FAILURE TO COMPLY WITH SUCH DOCUMENTATION REQUIREMENTS SHALL BE REFLECTED IN THE EVALUATION OF ANY PRINCIPAL OR ADMINISTRATOR WHO IS RESPONSIBLE FOR EVALUATING CERTIFICATED PERSONNEL.

(4.5) Any ~~certificated personnel~~ PERSON whose performance evaluation includes a remediation plan shall be given an opportunity to improve his OR HER performance through the implementation of the plan. If the next performance evaluation shows that the ~~certificated personnel~~ PERSON is now performing satisfactorily, no further action shall be taken concerning the original performance evaluation. If such evaluation shows the ~~certificated personnel~~ PERSON is still not performing satisfactorily, the evaluator shall either make additional recommendations for improvement or may recommend the dismissal of such ~~certificated personnel~~ PERSON in accordance with the provisions of article 63 of this title.

**SECTION 6. Effective date - applicability.** This act shall take effect July 1, 1998, and the provisions of section 5 of this act shall apply to evaluations conducted on or after said date.

**SECTION 7. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

*Colorado Legislative Council Staff*

# STATE and LOCAL FISCAL NOTE

*State General Fund Expenditure Impact*
*State Cash Fund Revenue and Expenditure Impact*
*School District Expenditure Impact*

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|---|---|---|---|
| **Drafting Number:** | LLS 98-174 | **Date:** | November 14, 1997 |
| **Prime Sponsor(s):** | Rep. Allen<br>Sen. Arnold | **Bill Status:** | Interim Committee on Teacher Evaluation and Dismissal |
| | | **Fiscal Analyst:** | Harry Zeid (866-4753) |

**TITLE:** CONCERNING THE PERFORMANCE EVALUATION SYSTEM FOR CERTIFICATED EDUCATION PERSONNEL.

**Summary of Legislation**

| STATE FISCAL IMPACT SUMMARY | FY 1998/99 | FY 1999/2000 |
|---|---|---|
| **State Revenues** | | |
| General Fund | | |
| Educator Licensure Cash Fund | $5,300 | |
| **State Expenditures** | | |
| General Fund | $4,500 | |
| Educator Licensure Cash Fund | $5,300 | |
| FTE Position Change | None | None |

**Local Government Impact** — The bill will increase the workload of some administrators at the school district level.

This bill would make changes to current law regarding the requirements for principal and administrator preparation programs related to teacher evaluations. In addition, the bill would modify the procedure for and method of evaluations for probationary and nonprobationary teachers.

Sections 1 through 4 of the bill would require that each university or college in the state that offers a principal or administrator preparation program, or school district or BOCS that provides evaluator training, include standards-based performance assessments of each program participant, demonstrated competency, and certification of the skills mastered by the participant. Training areas to be included in the training program are identified in the bill. The State Board of Education would adopt rules to ensure that principal and administrator programs of preparation meet these requirements. Principals and administrators who are assigned evaluator duties on or after July 1, 2000, would be required to have evaluator training that meets the requirements established by the State Board.

Section 5 of the bill modifies the duties of local boards of education. Specifically, each school district's performance evaluation system would include one documented observation every 90 days and one written evaluation per year for probationary teachers. One documented observation per semester and one written evaluation every three years would be required for nonprobationary teachers. The bill establishes that at least one of the standards set by local school districts for measuring teacher performance shall be directly related to classroom instruction, including student performance. Performance standards and criteria would be available in writing to all certificated personnel of the school district. Evaluation reports may include peer observations and standardized client surveys.

The bill will require an expenditure of General Fund and cash fund moneys at the state level and will increase the workload of some administrators at the school district level. Therefore, the bill is assessed as having state and local fiscal impact. The bill would become effective July 1, 1998. Section 5 of the bill would apply to evaluations conducted on or after that date.

**State Revenues**

The bill would require additional funds for amending rules for higher education program approval and for developing new rules for approval of evaluator training programs. The one-time expenditure of $5,300 for FY 1998-99 would be paid from the Educator Licensure Cash Fund through a minimal increase in educator license fees of approximately 20 cents per license.

**State Expenditures**

Section 1 of the bill requires that every university and college within the state that has a principal or administrator preparation program ensure that the program includes training in the evaluation of certificated personnel that meets the requirements of the bill. The Colorado Commission on Higher Education anticipates that no fiscal impact would result from institutions of higher education modifying courses to comply with these changes.

The bill would result in the need for additional state expenditures, however, for the Department of Education during FY 1998-99 in two primary areas: a cash fund expenditure for amending rules for higher education program approval and developing new rules for approval of evaluator training programs, and a General Fund expenditure for developing amendments to State Board of Education guidelines relating to personnel evaluation.

**Educator Licensure Cash Fund.** Section 2 of the bill requires that the State Board of Education adopt rules to ensure that principal and administrator programs of preparation at institutions of higher education meet the requirements concerning instruction in evaluating certificated personnel that are outlined in Section 1 of the bill. It is anticipated that this task will require $3,000 for the cost of several meetings to develop rule amendments for educator licensure, as well as meetings to develop new rules relating to new evaluator training. In addition, the need for $1,500 is anticipated for related operating expenses such as postage and office supplies. In addition, $800 will be required to cover the cost of notification of principals and administrators regarding the new professional development requirements for license renewal. It is anticipated that the one-time expenditure of $5,300 for FY 1998-99 would be paid from the Educator Licensure Cash Fund through a minimal increase in educator license fees of approximately 20 cents per license.

**General Fund.** It is assumed that the Department of Education will convene the State Certificated Personnel Evaluation Council for two meetings to develop revisions of the State Board guidelines on personnel evaluation. It is anticipated that the cost for these meetings will be $1,000. In addition, it is anticipated that $3,500 will be necessary for the cost of printing and distribution of 1,000 copies of the guidelines to local administrators, BOCS directors, local school district certificated personnel performance evaluation councils, and other affected individuals. The one-time cost related to these meetings, and the cost of distributing the revised guidelines would be a General Fund obligation.

**School District Impact**

Section 4 of the bill modifies the frequency and duration of evaluations that must be conducted for probationary and nonprobationary teachers to ensure the collection of a sufficient amount of data from which reliable conclusions and findings may be drawn. It is anticipated that for a majority of school districts, this requirement will increase the number of evaluations that will be conducted annually. Therefore, a shift in administrator time and resources to the evaluation process can be expected. Similarly, a modification of school district and BOCS personnel evaluation systems will be required.

**Spending Authority**

The fiscal note implies that the Department of Education would require an additional General Fund appropriation in the amount of $4,500 in FY 1998-99 in order to implement the provisions of the bill. In addition, the Department of Education would require additional cash fund spending authority in the Educator Licensure Cash Fund in the amount of $5,300 in FY 1998-99.

**Departments Contacted**

Education  Colorado Commission on Higher Education

**BILL B**

By Senator Arnold

A BILL FOR AN ACT

CONCERNING TEACHER DISMISSAL.

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**Bill Summary**

"Teacher Dismissal Procedures"

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Interim Committee on Teacher Evaluation and Dismissal

**Grounds for dismissal.** Amends the grounds for dismissal of a teacher by deleting "physical or mental disability" as a ground and specifying the standards by which certain violations are measured. Requires the state board of education to adopt a statewide code of conduct for school district employees. Adds actions that a teacher knows or should know will endanger the health or safety of students to the grounds for dismissal. Specifies that dismissal based on incompetency, neglect of duty, unsatisfactory performance, or insubordination must be supported by documentation from the teacher's performance evaluations.

Requires persons to agree to abide by the statewide code of conduct as a condition of educator licensure.

**Dismissal procedures.** Shortens the time for notifying the teacher of a dismissal recommendation from 7 days to 3 days. Shortens the maximum period for which a suspended teacher may receive pay from 120 days to 94 days. Shortens the time for the teacher to request a hearing from 7 days to 5 working days. Changes the time for selecting a hearing officer from 5 days after the notice of objection to 5 working days. If the teacher and chief administrative officer cannot agree on a hearing officer within 5 working days, instructs them to request assignment of an administrative law judge from the department of personnel. Requires the hearing officer to set the hearing date within 3 working days after selection, rather than 5. Requires the hearing to be held within 30 days after the hearing date is set, rather than 30 days after selection of the hearing officer. Reduces the length of the hearing from 10 days to 8 days unless extended by a showing of good cause.

Requires the teacher to provide the school district with copies of any documents he or she plans to introduce at the hearing. Allows both the teacher

and the chief administrative officer of the district to supplement their document and witness lists within 7 days after the teacher submits his or her documents.

Allows the hearing officer to conduct an informal hearing, but requires him or her to follow the Colorado rules of evidence concerning hearsay testimony. Limits the hearing officer to recommending only dismissal or retention. Prevents the hearing officer from placing any conditions on a recommendation for retention. Allows the hearing officer to issue his or her decision, rather than adopting it in open session.

Limits the grounds for appeal to whether the school district board's action in dismissing the teacher was based on the specific grounds for dismissal stated in the recommendation and whether the hearing officer's findings of fact showed sufficient evidence of the grounds for dismissal that the board did not act arbitrarily and capriciously in dismissing the teacher. Deletes language establishing a different standard of review if the board did not follow the hearing officer's recommendation.

Requires the party who loses on appeal to pay the costs of the appeal, including attorney fees.

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*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 22-63-301, Colorado Revised Statutes, is amended to read:

**22-63-301. Grounds for dismissal.** A teacher may be dismissed for ~~physical or mental disability~~; incompetency BASED ON THE SCHOOL DISTRICT'S PERFORMANCE STANDARDS, neglect of duty, immorality AS DESCRIBED BY THE CODE OF CONDUCT ADOPTED BY THE STATE BOARD OF EDUCATION PURSUANT TO SECTION 22-2-106 (1) (f.9), DOCUMENTED unsatisfactory performance BASED ON THE SCHOOL DISTRICT'S PERFORMANCE STANDARDS, insubordination, the conviction of a felony or the acceptance of a guilty plea, a plea of nolo contendere, or a deferred sentence for a felony, ACTIONS THAT THE TEACHER KNOWS OR SHOULD KNOW WILL ENDANGER THE HEALTH OR SAFETY OF STUDENTS, or other good and just cause DIRECTLY RELATED TO THE PERFORMANCE OF JOB-RELATED DUTIES, AS DEFINED BY EACH SCHOOL DISTRICT BOARD. No teacher shall be dismissed for temporary illness, leave of

absence previously approved by the board, or military leave of absence pursuant to article 3 of title 28, C.R.S. ANY DISMISSAL BASED ON INCOMPETENCY, NEGLECT OF DUTY, UNSATISFACTORY PERFORMANCE, OR INSUBORDINATION SHALL BE BASED ON AND DOCUMENTED IN EVALUATIONS CONDUCTED BY TRAINED EVALUATORS PURSUANT TO THE PROVISIONS OF ARTICLE 9 OF THIS TITLE.

**SECTION 2.** 22-63-302 (2), (3), (4) (a), (5), (6) (a), (7) (a), (7) (d), (7) (e), (8), (9), and (10), Colorado Revised Statutes, are amended to read:

**22-63-302. Procedure for dismissal - judicial review.** (2) The chief administrative officer of the employing school district may recommend that the board dismiss a teacher based upon one or more of the grounds stated in section 22-63-301. If such a recommendation is made to the board, such teacher, within ~~seven~~ THREE days after the board meeting at which the recommendation is made, shall be given a written notice of intent to dismiss. The notice of intent to dismiss shall include a copy of the reasons for dismissal, a copy of this article, and all exhibits which the chief administrative officer intends to submit in support of his OR HER prima facie case against the teacher including a list of witnesses to be called by the chief administrative officer, addresses and telephone numbers of the witnesses, and all pertinent documentation in the possession of the chief administrative officer relative to the circumstances surrounding the charges. Additional witnesses and exhibits in support of the chief administrative officer's prima facie case may ~~not be added at a later date except on a showing of good cause~~ BE ADDED AS PROVIDED IN SUBSECTION (6) OF THIS SECTION. The notice and copy of the charges shall be sent by certified mail to said teacher at his OR HER address last known to the secretary of the

board. The notice shall advise the teacher of his OR HER rights and the procedures under this section.

(3) If a teacher objects to the grounds given for the dismissal, ~~such~~ THE teacher may file with the chief administrative officer a written notice of objection and a request for a hearing. Such written notice shall be ~~made~~ FILED within ~~seven~~ FIVE WORKING days ~~of the~~ AFTER receipt by the teacher of the notice of dismissal. If the teacher fails to file the written notice within said time, such failure shall be deemed to be a waiver of ~~his~~ THE right to a hearing and the dismissal shall be final; except that the board of education may grant a hearing upon a determination that the failure to file written notice for a hearing was due to good cause. If the teacher files a written notice of objection, ~~such~~ THE teacher shall continue to receive regular compensation from the time ~~such teacher~~ HE OR SHE is suspended until a decision is rendered by the board pursuant to subsection (9) of this section, but in no event beyond ~~one hundred twenty~~ NINETY-FOUR days.

(4) (a) If a THE TEACHER REQUESTS A hearing, ~~is requested by the teacher~~, it shall be conducted before an impartial hearing officer selected jointly by the teacher and the chief administrative officer. The hearing officer shall be selected no later than five WORKING days following the receipt by the chief administrative officer of the teacher's written notice of objection. If the teacher and the chief administrative officer fail to agree on the selection of a hearing officer, they shall request ~~the chief judge of the judicial district in which the school district is located to select a list of three hearing officers. The list of hearing officers shall be given to the teacher and the chief administrative officer within five days of the request by the parties. Each party may strike one name from the list and shall notify the chief judge of the name to be stricken no later~~

~~than three days following receipt of the list. The person whose name is not struck shall be the hearing officer; except that, if more than one name remains on the list because the parties struck the same name or because one or both parties failed to strike a name within the prescribed time period, the chief judge may choose the hearing officer from the remaining names.~~ ASSIGNMENT OF AN ADMINISTRATIVE LAW JUDGE BY THE DEPARTMENT OF PERSONNEL TO ACT AS THE HEARING OFFICER.

(5) Within ~~five~~ THREE WORKING days ~~of his~~ AFTER selection, the hearing officer SHALL SET THE DATE OF THE HEARING, WHICH SHALL COMMENCE WITHIN THE FOLLOWING THIRTY DAYS, AND shall give the teacher and the chief administrative officer ~~at least fourteen days'~~ written notice of the date for the hearing including the time and the place therefor. ~~but in no event shall such hearing commence more than thirty days after the selection of the hearing officer.~~



(6) (a) Within ten days ~~of the~~ AFTER selection of the hearing officer, the teacher shall provide to the chief administrative officer a ~~list~~ COPY of all exhibits to be presented at the hearing and A LIST OF all witnesses to be called, including the addresses and telephone numbers of the witnesses. WITHIN SEVEN DAYS AFTER THE TEACHER SUBMITS HIS OR HER EXHIBITS AND WITNESS LIST, THE CHIEF ADMINISTRATIVE OFFICER AND THE TEACHER MAY SUPPLEMENT THEIR EXHIBITS AND WITNESS LISTS. ON COMPLETION OF THE SEVEN-DAY PERIOD, additional witnesses and exhibits may not be added ~~at a later date~~ except upon a showing of good cause.

(7) (a) Hearings held pursuant to this section shall be open to the public unless either the teacher or the chief administrative officer requests a private hearing before the hearing officer, but no findings of fact or recommendations

shall be adopted by the hearing officer in any private hearing. The procedures for the conduct of the hearing shall be informal, and rules of evidence shall not be strictly applied except as necessitated in the opinion of the hearing officer. EXCEPT THAT THE HEARING OFFICER SHALL COMPLY WITH THE COLORADO RULES OF EVIDENCE IN EXCLUDING HEARSAY TESTIMONY.

(d) An audiotaped record shall be made of the hearing, and, if the teacher files an action for review pursuant to the provisions of subsection (10) of this section, the teacher and the school district shall share equally in the cost of transcribing the record. EXCEPT THAT THE PARTY THAT PREVAILS AT THE APPELLATE LEVEL SHALL RECEIVE REIMBURSEMENT FROM THE NONPREVAILING PARTY AS PROVIDED IN PARAGRAPH (f) OF SUBSECTION (10) OF THIS SECTION.

(e) Any hearing held pursuant to the provisions of this section shall be completed within ~~ten~~ EIGHT WORKING days ~~of its~~ AFTER commencement, ~~unless the parties otherwise agree~~ UNLESS EXTENDED BY THE HEARING OFFICER ON A SHOWING OF GOOD CAUSE, and neither party shall have more than ~~five~~ FOUR days to present its case in chief.

(8) The chief administrative officer shall have the burden of proving that ~~his~~ THE recommendation for the dismissal of the teacher was for the reasons given in the notice of dismissal and that the dismissal was made in accordance with the provisions of this article. Where unsatisfactory performance is a ground for dismissal, the chief administrative officer shall establish that the teacher had been evaluated pursuant to the written system to evaluate certificated personnel adopted by the school district pursuant to section 22-9-106. The hearing officer shall review the evidence and testimony and make written findings of fact thereon. The hearing officer shall make ONLY one of the two following recommendations: The teacher be dismissed or the teacher be retained. A

RECOMMENDATION TO RETAIN A TEACHER SHALL NOT INCLUDE ANY CONDITIONS ON RETENTION. The findings of fact and the recommendation shall be ~~adopted~~ ISSUED by the hearing officer ~~in open session~~ not later than twenty days after the conclusion of the hearing and shall be forwarded to said teacher and to the board.

(9) The board shall review the hearing officer's findings of fact and recommendation, and it shall enter its written order within twenty days after the date of the hearing officer's findings and recommendation. The board shall take one of the three following actions: The teacher be dismissed; the teacher be retained; or the teacher be placed on a one-year probation; but, if the board dismisses the teacher over the hearing officer's recommendation of retention, the board shall make a conclusion, giving its reasons therefor, which must be supported by the ~~record~~ HEARING OFFICER'S FINDINGS OF FACT, and such ~~finding~~ CONCLUSION AND REASONS shall be included in its written order. The secretary of the board shall cause a copy of said order to be given immediately to the teacher and a copy to be entered into the teacher's local file.

(10) (a) If the board dismisses the teacher pursuant to the provisions of subsection (9) of this section, the teacher may file an action for review in the court of appeals in accordance with the provisions of this subsection (10), in which action the board shall be made the party defendant. Such action for review shall be heard in an expedited manner and shall be given precedence over all other civil cases, except cases arising under the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., and cases arising under the "Colorado Employment Security Act", articles 70 to 82 of title 8, C.R.S.

(b) THE ISSUES ON APPEAL OF THE BOARD'S DECISION SHALL BE LIMITED TO WHETHER THE BOARD'S ACTION IN DISMISSING THE TEACHER WAS BASED ON THE SPECIFIC GROUNDS FOR DISMISSAL STATED BY THE CHIEF ADMINISTRATIVE OFFICER AND WHETHER THE FINDINGS OF FACT SPECIFIED BY THE HEARING OFFICER SHOWED SUFFICIENT EVIDENCE OF THE EXISTENCE OF SAID GROUNDS TO SUPPORT DISMISSAL SO THAT THE BOARD DID NOT ACT ARBITRARILY OR CAPRICIOUSLY IN DISMISSING THE TEACHER.

~~(b)~~ (c) An action for review shall be commenced by the service of a copy of the petition upon the board of the school district and filing the same with the court of appeals within twenty days after the written order of dismissal made by the board. The petition shall state the grounds upon which the review is sought. After the filing of the action for review in the court of appeals, such action shall be conducted in the manner prescribed by rule 3.1 of the Colorado appellate rules.

~~(c)~~ (d) The action for review shall be based upon the record before the hearing officer. ~~If the decision of the board to dismiss the teacher was in accordance with the recommendation of the hearing officer~~, The court of appeals shall review such record to determine whether the action of the board was arbitrary or capricious or was legally impermissible. ~~If the decision of the board to dismiss the teacher was made over the hearing officer's recommendation of retention, the court of appeals shall either affirm the decision of the board or affirm the recommendation of the hearing officer, based upon the court's review of the record as a whole and the court's own judgment as to whether the board's decision or the hearing officer's recommendation has more support in the record as a whole.~~

~~(d)~~ (e) In the action for review, if the court of appeals finds ~~any~~ A SUBSTANTIAL irregularity or error made during the hearing before the hearing officer, the court ~~shall~~ MAY remand the case for further hearing.

(f) THE COSTS OF THE APPEAL INCURRED BY BOTH THE TEACHER AND THE SCHOOL DISTRICT, INCLUDING THE COSTS OF THE TRANSCRIPT AND ATTORNEY FEES, SHALL BE PAID IN WHOLE BY THE PARTY WHO DOES NOT PREVAIL ON APPEAL. THE COURT SHALL ENTER A JUDGMENT FOR SUCH COSTS, INCLUDING ATTORNEY FEES, AGAINST THE PARTY WHO DOES NOT PREVAIL AT THE CONCLUSION OF THE APPEAL.

~~(e)~~ (g) Further appeal to the supreme court from a determination of the court of appeals may be made only upon a writ of certiorari issued in the discretion of the supreme court.

**SECTION 3.** 22-2-106 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**22-2-106. State board - duties.** (1) It is the duty of the state board:

(f.9) TO ADOPT A STATEWIDE CODE OF CONDUCT FOR ALL SCHOOL DISTRICT PERSONNEL THAT, AT A MINIMUM, SHALL ESTABLISH STANDARDS FOR APPROPRIATE CONDUCT WITH STUDENTS. IN DEVELOPING THE CODE OF CONDUCT, THE STATE BOARD SHALL WORK WITH AND CONSIDER INPUT FROM SCHOOL DISTRICT BOARDS OF EDUCATION, TEACHERS, PRINCIPALS, ADMINISTRATORS, AND PARENTS.

**SECTION 4.** 22-60.5-105, Colorado Revised Statutes, is amended to read:

**22-60.5-105. Applicants for licensure or authorization - moral qualifications.** In determining the moral qualifications of applicants for licensure or authorization, the department of education shall be governed by the

provisions of section 24-5-101, C.R.S. EACH APPLICANT FOR ISSUANCE OR RENEWAL OF A LICENSE OR AUTHORIZATION SHALL AGREE TO ABIDE BY THE STATEWIDE CODE OF CONDUCT ADOPTED BY THE STATE BOARD OF EDUCATION PURSUANT TO SECTION 22-2-106 (1) (f.9).

**SECTION 5.** 22-60.5-107 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**22-60.5-107. Grounds for denying, annulling, suspending, or revoking license, certificate, endorsement, or authorization.** (2) Any license, certificate, endorsement, or authorization may be denied, annulled, suspended, or revoked in the manner prescribed in section 22-60.5-108, notwithstanding the provisions of subsection (1) of this section:

(e) WHEN THE HOLDER REFUSES TO AGREE TO OR FAILS TO ABIDE BY THE STATEWIDE CODE OF CONDUCT ADOPTED BY THE STATE BOARD OF EDUCATION PURSUANT TO SECTION 22-2-106 (1) (f.9).

**SECTION 6. Effective date - applicability.** This act shall take effect July 1, 1998, and shall apply to recommendations for dismissal made on or after said date.

**SECTION 7. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

*Colorado Legislative Council Staff*

# STATE and LOCAL FISCAL NOTE

*State General Fund Revenue and Expenditure Impact*
*School District Expenditure Impact*

| | | | |
|---|---|---|---|
| **Drafting Number:** | LLS 98-175 | **Date:** | November 14, 1997 |
| **Prime Sponsor(s):** | Rep. Dean<br>Sen. Arnold | **Bill Status:** | Interim Committee on Teacher Evaluation and Dismissal |
| | | **Fiscal Analyst:** | Harry Zeid (866-4753) |

**TITLE:** CONCERNING TEACHER DISMISSAL.

**Summary of Legislation**

| STATE FISCAL IMPACT SUMMARY | FY 1998/99 | FY 1999/2000 |
|---|---|---|
| **State Revenues**<br>General Fund*<br>Other Fund | Potential impact see note below | |
| **State Expenditures**<br>General Fund*<br>Other Fund | Potential impact see note below | |
| FTE Position Change | None | None |
| **Local Government Impact** — Additional school district resources may be required. School district cost savings may also occur. For further explanation, see the School District Impact section of the fiscal note. | | |

**If administrative law judges from the Department of Personnel are used as hearing officers in dismissal actions, there would be a state General Fund revenue and expenditure impact.*

This bill would make changes to current law regarding the grounds for dismissal of a teacher. It would also make several changes to the dismissal procedures.

Under current law, a teacher may be dismissed for physical or mental disability. Section 1 of the bill would eliminate this grounds for dismissal. Incompetency as grounds for dismissal would have to be based on the school district's performance standards, and immorality as grounds for dismissal would have to be based on a code of conduct adopted by the State Board of Education. In addition, the bill requires that unsatisfactory performance as grounds for dismissal be documented and based on the school district's performance standards. The bill adds other actions to the list of potential grounds for dismissal. This would include actions that a teacher knows or should know will result in endangering the health or safety of students and other good and just cause directly related to the performance of job-related duties.

Section 2 of the bill would make several changes in the administrative review procedure for dismissal. The time period for notification of a teacher of a dismissal recommendation would be shortened from 7 days to 3 days, the maximum period for which a suspended teacher may receive pay would be reduced from 120 days to 94 days, and the time in which a teacher may request a hearing would be changed from 7 days to 5 working days. This section would also make several changes to the teacher dismissal hearing process. These changes include: (1) if the teacher and chief administrative officer cannot agree on a hearing officer within five working days, the parties must request the assignment of an administrative law judge from the Department of Personnel; (2) the hearing officer may no longer place any conditions on a recommendation for retention; (3) the grounds for appeal would be limited to whether the school district board's action in dismissing the teacher was based on the stated grounds and whether the hearing officer's findings of fact showed significant evidence that the board did not act arbitrarily and capriciously in dismissing the teacher; and (4) the party who loses on appeal must pay the costs of the appeal, including attorney fees.

The bill would affect expenditures at the school district level. Therefore, the bill is assessed as having local fiscal impact. State fiscal impact is contingent upon the use of administrative law judges in dismissal actions. The bill would become effective July 1, 1998, and would apply to recommendations for dismissal made after that date.

**State Expenditures**

It is assumed that ultimately, the State Board of Education will incorporate a statewide code of conduct for all school district personnel into the rules for the licensure program. The State Board would solicit input from school district boards of education, teachers, principals, administrators, and parents. As part of this process, the State Board may convene a series of ad hoc committee meetings on the subject to solicit input. The cost of these meetings is presumed to be minimal (approximately $500 per meeting) and would be conducted in conjunction with other meetings within the current budget of the department.

The bill provides that if the teacher and the chief administrative officer fail to agree on the selection of a hearing officer, they shall request assignment of an administrative law judge by the Department of Personnel to act as the hearing officer. The costs associated with using administrative law judges as hearing officers will be dependent upon the number of requests, which are anticipated to be less than ten requests per year. Costs of using administrative law judges would be reimbursed by the school district to the state General Fund.

**School District Impact**

It is assumed that local school districts will revise their personnel policies to conform with the revised grounds for dismissal provisions of the bill. The amount of school district resources necessary to provide these changes has not been identified. Additional local legal counsel may also be required for this requirement.

The bill makes several changes in the current-law timelines identified in the judicial review procedures for dismissal. These changes may reduce the school district administrative costs associated with judicial review. In addition, the number of days that a teacher may be paid while under suspension would be reduced from 120 days to 94 days. Based on an average daily rate of pay for teachers of $191, this provision may reduce the maximum pay per suspended teacher by an average of $5,730 per dismissal case. The number of future suspensions and the average term of the suspension is uncertain. Therefore, the statewide cost savings to school districts for this provision has not been identified.

If a local board of education dismisses a teacher following a hearing, the teacher may file an action for review in the Court of Appeals. The bill requires that the costs of the appeal incurred by both the teacher and the school district, including the costs of the transcript and attorney fees, will be paid in whole by the party who does not prevail on appeal. Since the school district's costs in the appeal would be reimbursed by the teacher, this provision would reduce the costs of the appeal for school boards in cases where the court of appeals upholds the dismissal.

**Spending Authority**

The fiscal note implies that no new expenditure of state moneys will be necessary in order to implement the provisions of the bill.

**Departments Contacted**

Education Personnel